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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/080,118

02/21/2002

Richard W. Bauer

84199F-P

1693

7590

10/17/2003

Milton S. Sales  
Patent Legal Staff  
Eastman Kodak Company  
343 State Street  
Rochester, NY 14650-2201

EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/080,118	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> LIEN TM NGO	<b>Art Unit</b> 3727	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 7,14,15,22 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13,16-21,23-28 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicant's election without traverse of species I, claims 1-6, 8-13, 16-21, 23-28 and 30, in Paper No. 6 is acknowledged.

#### ***Specification***

2. The disclosure is objected to because of the following informalities:  
In page 6, lines 10-15, "closure assembly 12" should be --closure assembly 10--, and  
"The bottle 10" should be --the bottle 12--.

Appropriate correction is required.

#### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the securing member of the seal in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 16-21, 23-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 16, "said seal having a securing member for securing said cap member to said neck portion" is not described in the specification.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-6, 8-13, 16-21, 23-28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1-6 and 8-13, it is confusing what comprises the invention.

Claim 1 defines a closure assembly for a bottle, but the body claim positively recites structural elements of the bottle

("a seal secured to the neck portion of said bottle" ...). Is the invention a closure assembly or a bottle and closure assembly combination? Applicant is required to state whether a subcombination or combination is intended and amend to clarify the matter.

In claims 1 and 16, line 7, "said opening" lack antecedent basis.

***Claim Objections***

8. Claim 16 is objected to because of the following informalities: In claim 16, line 2, "the bottle closure assembly" should be --the bottle and bottle closure assembly--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Su (4,770,305). Su discloses, in figs. 1, 7 and 8, a bottle closure assembly comprising a seal 3 secured to a neck portion of a bottle, and a cap member 2 for assisting in the rupture of the seal, the cap member having rupture members 80.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Su in view of Osip et al. (4,993,569).

Su does not teach the closure assembly having internal threads.

Osip et al. teach a piercing closure having internal threads.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the Su closure assembly having internal threads and the bottle having external threads, as taught by Osip et al., so that the closure assembly engages to the bottle by a thread connection.

In regard to claims 8, 10 and 13, Su discloses, in fig. 7, ties 81 are provided for securing the rupture together, each of the rupture members having a connecting hinge member, and the ruptures are substantially in contact with the seal when the cap assembly is fully seated on the bottle neck (see fig. 4).

In regard claims 9, 11 and 12, it would have been obvious to make the closure assembly of Su in view of Osip et al. to have the rupture thickness and material, the hinge radius range, and the connecting hinge slot as claimed. Since such modification would have involved a mere change in size and material of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). And since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rani et al. and Moscovitz teach cap members for assisting in the rupture of seals

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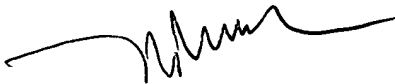
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Lien Ngo

October 15, 2003.

A handwritten signature in black ink, appearing to be 'Lien Ngo', with a long horizontal line extending to the left.